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IN THE  
**SUPREME COURT OF THE UNITED STATES**

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OCTOBER TERM, 1968

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**No. 938**

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DELLA HADLEY, LUCILE S. STARK, LILLIAN  
WAGNER, and GWENDOLYN M. WELLS,  
*Appellants,*

VS.

THE JUNIOR COLLEGE DISTRICT OF METROPOLI-  
TAN KANSAS CITY, MISSOURI, JAMES W. STEPHENS,  
President, WILLIAM L. CASSELL, REED B. KENAGY,  
JR., and MRS. Y. B. WASSON, Members, and LINDA L.  
COULSON, Secretary, of the Board of Trustees of the Junior  
College District of Metropolitan Kansas City, Missouri,

AND

HONORABLE NORMAN H. ANDERSON,  
Attorney General of the State of Missouri,  
*Appellees.*

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ON APPEAL FROM THE SUPREME COURT OF MISSOURI

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**MOTION TO DISMISS OR AFFIRM**

Appellee, Attorney General of Missouri, pursuant to  
Rule 16 of the Rules of the Supreme Court of the United  
States, moves the court to dismiss this appeal or to affirm

the decree of the Missouri Supreme Court for the reason that the decision of the Supreme Court is plain and correct that a substantial federal question is not presented and that plenary consideration is not warranted.

### STATEMENT

We consider the jurisdictional factual statements by the appellants to be sufficient, and we will not restate them in this brief.

### ARGUMENT

**The decision of the Missouri Supreme Court is plainly correct. The questions presented have been previously ruled upon by this court and do not merit plenary consideration.**

The appellants contend that the equal representation doctrine applies to trustees of junior college districts of Missouri which are elected from component public school districts. The Missouri Supreme Court held that the equal representation doctrine did not apply to Missouri junior college districts and that Sections 178.820 and 178.840, RSMo Supp. 1967 (Missouri Junior College District Law) were valid under both the Fourteenth Amendment of the United States Constitution and Article I, Section 2 of the Missouri Constitution. The court stated (Appendix 1, appellants' Jurisdictional Statement, p. 12a):

“\* \* \* We hold that the defendant district is essentially an administrative body created by the legislature for the sole and special purpose of conducting a 2-year college institution, and that it is **not** a ‘unit of local government having general governmental powers over the entire geographic area served by the body.’ Avery, supra. We further hold that the district has no substantial legislative functions or powers, a matter which has definitely been considered as meaningful in Sailors, supra, and in Avery at 20 L.Ed.2d loc. cit. 53, 54. \* \* \*

In **Sailors, et al. v. Board of Education of the County of Kent, et al.**, 387 U.S. 105. This court refused to apply the equal representation doctrine to a county board of education stating that the board "performs essentially administrative functions; and while they are important, they are not legislative in the classical sense." (l.c. 110) Factually there was gross inequality in representation in the **Sailors** case. Respective sizes and representation of the school districts in the **Sailors** case are set forth in the District Court's opinion (254 F.Supp. 17). The relative voting power between the largest district and all the other districts was about 200 to 1.

Appellants assert that this court's holding in **Sailors** is based upon the fact that the members of the county school board were appointed rather than elected. We are of the view that the decisive factor in the **Sailors** case is the nonlegislative character of the county school board.

It is more reasonable to apply or not apply the equal representation doctrine on the basis of the governmental functions of the political entity involved than to apply or not apply the doctrine based upon the procedures of selecting the representatives. The contrary would give greater weight to form than to substance assuming that the equal representation rule applied to school districts, if the Missouri statutes provided that junior college district trustees would be elected by the directors of the component school district rather than the voters of the junior college district, then the facts here would be identical to the facts in **Sailors** and the Missouri Junior College District Law would be constitutional. In short, it would be possible to evade the constitutional equal representation requirements by merely providing a two-step system of election.

We interpret the **Sailors'** decision to be based upon a more fundamental distinction. Namely, the character of the

political entity and not the procedures of selection. This interpretation is supported by this court's decision in **Avery v. Midland County, Texas, et al.**, 390 U.S. 474.

In **Avery** this court applied the equal representation doctrine to the Commissioners Court of Midland County, Texas. The court stated l.c. 484, 485:

"\* \* \* We hold today only that the Constitution permits no substantial variation from equal population in drawing districts for units of local government having **general governmental powers** over the entire geographic area served by the body." (Emphasis added)

Immediately following this holding this court distinguished the **Sailors** case from the **Avery** case.

With these rules in mind let us look at the powers and functions of Missouri junior college districts. They are set out in Chapter 178, RSMo Supp. 1967 as follows:

The district is a body corporate and subdivision of the State of Missouri. Section 178.779.

**Establishment:** After initiation by petition and approval of the State Board of Education, the establishment of a junior college district at all times coextensive with the boundaries of the public school districts within the junior college district. These are referred to as component school districts. Section 178.790.

**Selection of Trustees:** Six trustees are elected by popular vote to operate the district. Trustees are elected at-large or from component school districts based upon relative school enumeration, Section 178.020.

**Tax levies** in excess of the base levy authorized by Section 178.870 require voter approval.

The issuance of bonds also requires voter approval. Section 164.121, RSMo Supp. 1967.

The board of trustees have the following powers and functions:

1. To sue and be sued. Section 178.770, Subsection 2.
2. To levy and collect taxes. Section 178.770, Subsection 2, Section 178.870.
3. To issue bonds after voter authorization. Section 178.770, Subsection 2.
4. To provide instruction (principally at the college level). Section 178.850.
5. To employ teachers and other necessary personnel and to fix their duties and compensation. Section 178.860.
6. To pass upon petitions for annexation. Section 178.890.
7. To acquire property by condemnation. Section 177.041.
8. To hold title to and exercise control over all property of the district and to provide for its maintenance. Sections 177.011 and 177.031.
9. To make rules and govern the school and its pupils. Sections 167.161 and 171.011.

From these statutes it is evident that junior college districts do not have "general governmental powers over the entire geographic area served by the body." Cities, town and counties have quasi sovereignty. They have law-making powers. They have judicial powers. They exercise police power by licensing and regulating businesses and persons in the interest of the public health and welfare. Such municipal corporations provide common services such as fire protection, police protection, streets, sewers, utilities, etc. A junior college district does not have any of these general powers to govern or serve the public. It is a special

purpose district which exists to provide a very important but nonetheless special purpose. It exists to educate, not to govern.

The cases cited by appellants which have applied the equal representation doctrine to school districts were all decided prior to this court's decision in *Sailors. Meyer, et al. v. Board of Education of Carroll County, Iowa*, 152 N.W.2d 617, was decided shortly after the *Sailors'* decision but prior to *Avery*. All of these cases failed to make any distinction between political entities with general governing powers and those with limited special powers.

Missouri junior college districts are special purpose districts without general governing powers. Accordingly, the doctrine of equal representation does not apply to the trustees of such districts.

### CONCLUSION

Appellee, Attorney General of Missouri, submits that the equal representation doctrine is not applicable to trustees of Missouri junior college districts, that the decision of the Missouri Supreme Court so holding is plainly correct in accord with previous rulings of this court. Accordingly, this case does not merit plenary consideration.

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